



Washington State Department of Agriculture

**LETTER TO REQUEST BIDS
No. K3873
WSDA Organic Food Program Inspectors**

March 25, 2022

The Washington State Department of Agriculture (WSDA) is soliciting proposals from qualified inspectors that can provide the following services:

Project Description:

Organic inspections on an as-needed basis for crop producers and related facilities that have applied for renewing certification with WSDA Organic Program in Washington State, with particular need in the Central and Eastern part of the state.

The period of performance of any contract awarded as a result of this **Letter to Request Bids** is tentatively scheduled to begin on or about April 25, 2022 and be in force through October 31, 2024 with possible amendments extending the period of performance for up to 2 (two) years. There may be multiple awards issued for this work.

If WSDA determines it is necessary to increase contractor's involvement, WSDA may amend any awarded contract to increase the contractor's involvement. Such an amendment, if any, to increase or decrease the dollar value and extend the period of performance shall be at the sole discretion of WSDA.

Contractor Qualifications:

The bidding is open to individuals or organizations that meet the following criteria:

- Bidder must have experience performing the following task:
 - Organic inspections in compliance with the USDA organic regulations (7 CFR Part 205).
- Bidder must be licensed to do business in Washington State.
- Bidder must have received training and certification by the International Organic Inspector Association (IOIA) for the applicable scope of the inspection.
- Bidder must have at least one (1) non-Bidder owned certification agency reference for whom the Bidder has provided similar services during the past thirty-six (36) months preceding the bid due date.
- Bidder must carry current automobile and liability insurance (see specific minimum coverage's in special terms and conditions of the contract).
- Bidder must be available for an in-person or web-based training on WSDA policies and forms prior to initiating inspections.

Bidders who do not meet these qualifications may be deemed to be non-responsive and will not be evaluated; no score will be assigned.

A proposal may be made for a specific range of inspections conducted at the rates stated below. The ranges are:

- 5-10 inspections
- 10-15 inspections
- 15-20 inspections
- 20 and above inspections

For instance, a bid may be for 10-15 inspections, for which the total contract value would be determined by the number of inspections and value of inspections assigned over the course of the contract. The contract will allow WSDA the flexibility to assign inspections where needed while also giving the contractor an expected range of work load and compensation. WSDA will award a contract in one of the above ranges, however an exact number of inspections is not guaranteed. Operations will be grouped geographically to allow the contractor efficient work planning.

It is anticipated that any contract awarded under this solicitation shall be in an amount not to exceed the following amount per assigned inspection. Use this amount to determine your total bid value.

- Crop producer inspections must not exceed \$775 per inspection.

The general Scope of Work will include the following:

The Contractor will include in their proposal an all-inclusive fee for each inspection to include travel, meals, supplies, conducting the inspection, any preparation or subsequent report writing or other expenses. These items need not be broken out in the bid, nor itemized in subsequent invoices.

The Contractor will conduct an on-site inspection as assigned by WSDA when an authorized representative of the operation who is knowledgeable about the operation is present and when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed, except in the case of the assignment of an unannounced inspection.

During the on-site inspection the Contractor must verify:

1. The operation's compliance or capability to comply with the USDA organic regulations (7 CFR Part 205);
2. That the information, including the organic production or handling system plan, provided in accordance with §§205.401, 205.406, and 205.200, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation;
3. That prohibited substances have not been and are not being applied to the operation through means which, at the discretion of WSDA, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.

The Contractor will document the inspection on the forms and in the format provided by WSDA. The final report will include USDA organic regulation citations and attachments, including photos as necessary to demonstrate compliance. Inspection reports should include observations and verification methods for each control point and fully describe any potential/suspected non-compliances.

Proposal Content:

The proposal is to be brief but should include:

1. Complete legal name and tax identification number.
2. Resume that outlines experience and qualifications.
3. Names, addresses and telephone numbers of three (3) business references. At least one (1) reference must be a certification agency for which the bidder has conducted organic inspection work during the past thirty-six (36) months preceding the bid due date.
4. Total costs or fees per package. Amount must include travel, meals, supplies, conducting the inspection, any preparation or subsequent report writing or other expenses. Inspection package bids must not exceed the maximum amounts set per inspection type (\$775 per crop producer).
5. IOIA training certificates of completion for the scope of inspections being bid.
6. One (1) example of a completed inspection report with confidential information redacted, or another example of technical writing by the Contractor showing their ability to provide objective and fact based observations and regulatory evaluations.
7. Other applicable training or licenses.
8. Proof of automobile insurance.
9. Proof of liability and/or business insurance.
10. Exhibit A, signed Executive Order 18-03 – Workers’ Rights certification

Proposals will be evaluated by WSDA based on the response to the information requested above and the following evaluation criteria.

EVALUATION CRITERIA

The following weights will be assigned to the proposal for evaluation purposes:

Inspection Report	35
Technical Training	35
Cost Proposal	25
Executive Order 18-03 Certification, Exhibit A	5
References	Pass / Fail
Total Points for Written Proposals	100

All items must be addressed for the proposal to be considered responsive. All bids shall be submitted electronically to Scott Rice at srice@agr.wa.gov. **The deadline for submission of responses is 5:00 pm on April 15, 2022, Pacific Standard Time, in Olympia, Washington.** LATE BIDS WILL NOT BE ACCEPTED AND WILL BE AUTOMATICALLY DISQUALIFIED FROM FURTHER CONSIDERATION. WSDA assumes no responsibility for delays caused by any delivery service or for problems with Bidder’s email. Bidders assume the risk for the method of delivery chosen.

Proprietary Information & Public Disclosure

Any information contained in the proposal that the bidder desires to claim as proprietary and exempt from disclosure under the provisions of RCW 42.56, must be clearly designated. Please cite the statute and briefly explain how it applies to the proprietary information supplied in the proposal. The page and the particular exception/s from disclosure upon which the bidder is making the claim must be identified. Each page claimed to be exempt from disclosure must be clearly identified by the word “confidential” printed on the lower right hand corner of the page. Marking the entire proposal as confidential will be neither accepted nor honored and may result in disclosure of the entire proposal. The bidder must be reasonable in designating information

as confidential. Confidentiality is available only to the limited extent allowed in state law. WSDA can choose to disclose despite information being marked as confidential.

After the contract is signed, the proposal shall be deemed public records as defined in RCW 42.56. Confidentiality is available only to the limited extent allowed in state law. To the extent consistent with chapter 42.56 RCW, the Agency will maintain the confidentiality of all such information marked confidential or proprietary. If the scope of a request made pursuant to RCW 42.56 includes the Contractor's proprietary or confidential information and the Agency intends to release the information, the Agency will notify the Contractor of the request and the date the records will be released to the requester. If Contractor desires to prevent disclosure, Contractor must obtain a court order enjoining disclosure. If the Contractor fails to obtain such court order, the Agency will release the requested information.

Procurement Evaluation for Executive Order 18-03 (Firms without Mandatory Individual Arbitration Clauses), Exhibit A

Pursuant to RCW 39.26.160(3) (best value criteria) and consistent with Executive Order 18-03 – Supporting Workers' Rights to Effectively Address Workplace Violations (dated June 12, 2018), WSDA will evaluate bids for best value and provide a bid preference in the amount of five (5)% to any bidder who certifies, pursuant to the certification attached as Exhibit A – Certifications, Assurances, and Executive Order 18-03, that their firm does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waiver.

Socially and Economically Disadvantaged Business Participation

In accordance with chapter 39.19 RCW, the state of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women's Business Enterprises (OMWBE). Participation may be either on a direct basis in response to this solicitation or on a subcontractor basis. However, no preference will be included in the evaluation of proposals, no minimum level of participation shall be required as a condition for receiving an award, and proposals will not be rejected or considered non-responsive on that basis.

For information on certified firms, consultants may contact OMWBE at (360) 664-9750 or <http://www.omwbe.wa.gov>.

WSDA reserves the right at its sole discretion to reject any or all bids prior to the execution of a contract. This **Letter to Request Bids** does not obligate WSDA to contract for the services specified herein. The final selection, if any, will be the bid(s) that in the opinion of WSDA best meets the requirements set forth in the **Letter to Request Bids** and is in the best interest of the state of Washington. WSDA is not obligated to select the lowest price bid. WSDA shall not be responsible for any costs associated with a bidder's preparation of a bid in response to this **Letter to Request Bids**.

WSDA, at its sole discretion, may after evaluating the written proposals elect to select the top-scoring firms as finalists for an oral presentation or demonstration. Should oral presentations or a demonstration become necessary, WSDA will contact the top-scoring firm(s) from the written evaluation to schedule a date, time and location. Any commitments made by the Proposer at the oral interview will be considered binding. The oral presentation will determine the apparent successful Contractor.

Any Bidder who has submitted a proposal and been notified that they were not selected for contract award may request a debriefing. The request for a debriefing conference must be received by the LRB Coordinator within three (3) business days after the Unsuccessful Consultant Notification is emailed to the Consultant. The debriefing must be held within five (5)

business days of the request. Complaints and protests may be made only by Bidders who submitted a response to this solicitation document and who have participated in a debriefing conference. This procedure constitutes the sole administrative remedy available to Bidders under this procurement.

In submitting a bid in response to this **Letter to Request Bids**, the bidder agrees to accept the terms set forth in this **Letter to Request Bids** and the Sample Contract and General Terms & Conditions attached. Any requests for information about this project are to be directed to Scott Rice at srice@agr.wa.gov.

Thank you for considering this solicitation.

Sincerely,

Scott Rice
External Affairs Coordinator

Attachments: Executive Order 18-03 – Workers Rights, Bidder Responsibility, Exhibit A; Sample Contract and General Terms & Conditions, Exhibit B

Exhibit A

**Contractor Certification
Executive Order 18-03 – Workers’ Rights, Bidder Responsibility**

I/we make the following certifications and assurances as a required element of the proposal to which it is attached, K3873, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract:

- 1. Bidder Responsibility Criteria; Bidder certifies that Bidder has not, within the three-year period immediately preceding the date of release of this competitive solicitation, been determined by a final and binding citation and notice of assessment issued by the state of Washington Department of Labor and Industries or through a civil judgment to have willfully violated state minimum wage laws (RCW 49.38.082; Chapters 49.46 RCW, 49.48 RCW, or 49.52 RCW). Bidder attests under penalty of perjury that the foregoing statement is true and correct.
- 2. Pursuant to the Washington State Governor’s Executive Order 18-03 (dated June 12, 2018), the Washington State Department of Agriculture is seeking to contract with qualified entities and business owners who certify that their employees are not, as a condition of employment, subject to mandatory individual arbitration clauses and class or collective action waivers.

I certify, on behalf of the firm identified below, as follows (check one):

NO MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. Bidder does **NOT** require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

OR

MANDATORY INDIVIDUAL ARBITRATION CLAUSES AND CLASS OR COLLECTIVE ACTION WAIVERS FOR EMPLOYEES. Bidder requires its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers.

I hereby certify, under penalty of perjury under the laws of the State of Washington, that the certifications herein are true and correct and that I am authorized to make these certifications on behalf of the firm listed herein.

***If electronic, also include:* We are submitting a scanned signature of this form with our proposal.**

BIDDER NAME: _____
Print Name of Bidder – Print full legal entity name of the firm submitting the Bid

By: _____
Signature of Bidder’s authorized person **Print Name of person making certifications for Bidder**

Title: _____
Title of person signing certificate **Place:** _____
Print city and state where signed

Date: _____

Exhibit B

CONVENIENCE CONTRACT FOR SERVICES
BETWEEN
WASHINGTON STATE
DEPARTMENT OF AGRICULTURE
AND
CONTRACTOR NAME

This Contract is made and entered into by and between the Washington State Department of Agriculture (hereinafter called "AGR"), and **CONTRACTOR** (hereinafter called "Contractor").

CONTRACTOR NAME
CONTACT INFORMATION

PURPOSE

This is a Convenience Contract to have the Contractor(s) provide organic inspections on an "as needed basis" for farms and facilities that have applied for initial or renewing certification with WSDA Organic Program.

In consideration of the terms and conditions contained herein, the parties agree as follows:

SPECIAL TERMS & CONDITIONS

STATEMENT OF WORK

The Contractor shall furnish the necessary personnel, equipment, material and/or services and otherwise do all things necessary for or incidental to the performance of work set forth in the *Statement of Work*, Attachment B, attached hereto and incorporated herein.

TERMS AND CONDITIONS

All rights and obligations of the parties to this Contract shall be subject to and governed by the following: *Special Terms & Conditions* contained in the text of this Contract; the *General Terms and Conditions*, Attachment A, and the *Statement of Work*, Attachment B which are attached hereto and incorporated by reference herein.

PERIOD OF PERFORMANCE

This Contract shall begin on **MONTH, DATE** 2022, or upon date of execution, whichever is later, and end on October 31, 2024, unless terminated sooner or extended by AGR as provided herein.

AGR reserves the right at its discretion, to extend the contract for 3 years.

COMPENSATION

AGR shall pay the following:

- Crop producer inspections must not exceed \$775 per inspection.
- Livestock producer inspections must not exceed \$880 per inspection.
- Handler inspections must not exceed \$675 per inspection.
- Processor inspections must not exceed \$880 per inspection.

AGR shall pay an amount not to exceed a total of **\$XXX** for the performance of all things necessary for or incidental to the performance of work as set forth in the *Statement of Work*, Attachment B which is attached hereto and incorporated by reference herein.

BILLING PROCEDURES

The Contractor shall invoice AGR monthly for all services provided in that month. No more than one invoice shall be submitted per month. AGR will pay the Contractor within 30 calendar days of receipt of properly executed invoice vouchers. Invoices shall include such information as is necessary for AGR to determine the date and exact nature of all expenditures. Each voucher will clearly reference **Contract Number KXXXX** and the Contractor's Statewide Vendor Registration number assigned by Washington State Office of Financial Management (OFM). If Contractor does not have an invoice template to request payment, Contractor can request a copy of a Certified State Invoice Voucher (Form A-19) from AGR. **Invoices shall be submitted to AGR's Contract Manager.**

Payment shall be made after acceptance by AGR's Contract Manager of each deliverable as described in the Statement of Work. No payment in advance or in anticipation of services or supplies under this Contract shall be made by AGR. Claims for payment submitted by the Contractor to AGR for costs due and payable under this Contract that were incurred prior to the expiration date shall be paid to the Contractor, if received by AGR within 90 days after the expiration date.

Statewide Vendor Registration. The Washington State Office of Financial Management (OFM) maintains a central contractor registration file for Washington State agencies to use for processing contractor payments. This allows many contractors to receive payments by direct deposit. Contractors are required to be registered in the Statewide Vendor Payment system, <http://des.wa.gov/services/contracting-purchasing/doing-business-state/receiving-payment-state>, prior to submitting a request for payment under this Contract. No payment shall be made until the registration is completed.

Timely payment. Payment by AGR will be considered timely if it is postmarked or deposited within 30 days of the following, whichever is later:

- Receipt of properly executed invoice vouchers;
- Acceptance of deliverables by AGR; or
- Statewide Vendor Registration.

INSURANCE

Commercial General Liability Insurance Policy: Provide a Commercial General Liability Insurance Policy, including contractual liability, in adequate quantity to protect against legal liability arising out of contract activity but no less than \$1,000,000 per occurrence. Additionally, the Contractor is responsible for ensuring that any Subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.

2. **Automobile Liability:** In the event that services delivered pursuant to this Contract involve the use of vehicles, either owned or unowned by the Contractor, automobile liability insurance shall be required. The Contractor shall notify his insurance carrier of the business use and submit to AGR a statement from the carrier acknowledging that the Contractor is insured for such use. This statement may be, for instance, a notation of coverage on the insurance certificate/s. The minimum limit for automobile liability is:

\$1,000,000 Per Occurrence, using a Combined Single Limit for bodily injury and property damage.

The insurance required above shall be issued by an insurance company(s) authorized to do business within the state of Washington, and *except for Professional Liability or Errors and Omissions Insurance* shall name the state of Washington, its agents and employees as additional insureds under the insurance policy(s). All policies shall be primary to any other valid and collectable insurance. The Contractor shall instruct the insurers to give AGR 30 days advance notice of any insurance cancellation.

Submit to AGR prior to the Contract's effective date a certificate of insurance which outlines at the least the coverage and limits defined in this section, *Insurance*, and in the attached *General*

Terms and Conditions, Attachment A. Contractor shall submit renewal certificates on a yearly basis during the term of the Contract.

MEMO OF UNDERSTANDING (Memo)

Any communications that either Contract Manager determines to address more than day-to-day concerns, but do not modify the terms of this Contract, shall be documented by a written, numbered *Memo of Understanding*.

ASSURANCES

AGR and the Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable federal, state and local laws, rules, regulations and AGR policy.

GOVERNANCE

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.

ORDER OF PRECEDENCE

The items listed below are incorporated by reference herein. In the event of an inconsistency in this Contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable Federal and Washington State Statutes and Regulations;
2. *Special Terms & Conditions* as contained in the basic Contract;
3. *General Terms & Conditions*, Attachment A;
4. *Statement of Work*, Attachment B;
5. *Vendor's proposal*, dated **XXXX XX, 2022**;
6. Any other provisions of the Contract incorporated by reference or otherwise.

SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, or part thereof if such remainder conforms to the terms and requirements of applicable law and the intent of this Contract, and to this end the provisions of this Contract are declared to be severable.

CONTRACT MANAGEMENT

The Contract Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Contract.

The Contract Manager for the Contractor is:	The Contract Manager for AGR is:
CONTRACTOR NAME ADDRESS	Scott Rice, External Affairs Coordinator
Phone: XXX-XXX-XXXX	Department of Agriculture PO Box 42560
E-Mail: XXXXXX	Olympia WA 98504-2560 Phone: (360) 359-3021
	E-Mail: srice@agr.wa.gov

ALL WRITINGS CONTAINED HEREIN

This Contract consists of X pages including the following attachments:

- Attachment A = General Terms and Conditions
- Attachment B = Statement of Work

This Contract sets forth in full all the terms and conditions agreed upon by the parties. Any other agreement, representation, or understandings, verbal or otherwise, regarding the subject matter of this Contract shall be deemed to be null and void and of no force and effect whatsoever.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CONTRACTOR

Washington State Department of Agriculture

(Signature) (Date)

(Signature) (Date)

(Print Name)

(Print Name)

(Title)

(Title)

(Tax Identification/Social Security Number)

(WA State UBI)

GENERAL TERMS AND CONDITIONS

DEFINITIONS

As used throughout this Contract, the following terms have the following meanings:

Agency means the Washington State Department of Agriculture, any division, section, office, unit or other entity of the Agency, or any of the officers or other officials lawfully representing that Agency.

Confidential Information means information identified as confidential or exempt from public disclosure. The term also includes Personal Information regardless of whether such information has been identified as confidential or exempt from disclosure.

Contract Manager means the representative identified in the Special Terms & Conditions of the Contract who is delegated the authority and responsibility to administer the Contract.

Contractor means that firm, provider, organization, individual or other entity performing service(s) under this contract, and includes all employees of the Contractor.

Director means the Agency's Director or any delegate authorized to act on the Director's behalf.

Personal Information means information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers or Protected Health Information as defined by the federal Health Insurance Portability and Accountability Act Pub. L. No. 104-191, § 264, 110 Stat. 1936, any financial identifiers, and other information that may be exempt from public disclosure or other unauthorized persons under state and federal statutes.

Subcontractor means one not in the employment of the Contractor, who is performing all or part of those services under this Contract under a separate contract with the Contractor. The terms "Subcontractor" and "Subcontractors" mean Subcontractor(s) in any tier.

ACCESS TO DATA

In compliance with chapter 39.26 RCW, the Contractor must provide access to data generated under this Contract to the Agency, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

ADVANCE PAYMENTS PROHIBITED

Contractor must not request payments in advance of or in anticipation of goods or services to be provided under this Contract.

AMENDMENTS

The parties may amend this Contract by mutual agreement. Such amendments are not binding unless in writing and signed by personnel authorized to bind each of the parties.

AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336 ("ADA") 28 CFR Part 35)

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

ASSIGNMENT

The Contractor must not transfer or assign this contract, or any claim arising under this contract, without prior written consent of the Agency.

ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party bears its own attorney fees and costs.

CALCULATION OF TIME

Unless otherwise specified, a time period prescribed in this Contract is in calendar days, begins to run the day after the date of the triggering act or event, and ends at 5:00 p.m. on the last day of the period. When the last day is a Saturday, Sunday, or legal holiday, the period of time ends at 5:00 p.m. on the next day that is not a Saturday, Sunday, or legal holiday.

CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Agency may terminate this Contract for cause and without notice of need to take corrective action if the Agency finds that the Contractor is involved in a violation of the Ethics in Public Service Act, Chapter 42.52 RCW, or any similar statute in connection with the procurement of or performance under this Contract. The Agency must provide the Contractor notice and an opportunity to respond to allegations prior to termination.

CONFIDENTIALITY/SAFEGUARDING INFORMATION

The Contractor must not use or disclose any information concerning the Agency for any purpose not directly connected with the administration of this Contract, except with prior written consent of the Agency or as may be required by law.

The Contractor must not release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons, including anyone not directly employed by Contractor, Confidential Information without the express written consent of the Agency or as otherwise required by law. The Contractor must protect Confidential Information, collected, used, or acquired in connection with this Contract against unauthorized use, disclosure, modification or loss. The Contractor must ensure its directors, officers, employees, subcontractors or agents use Confidential Information solely for the purposes of accomplishing the services set forth by this Contract.

Immediately upon expiration or termination of this Contract, Contractor will destroy all Confidential Information not required to be retained by professional standards.

Any breach of this provision may result in termination of the Contract and the demand for return of all Confidential Information. The Contractor indemnifies and holds harmless the Agency for any damages related to the Contractor's unauthorized use of Confidential Information.

COPYRIGHT PROVISIONS

Unless otherwise provided, all materials produced under this Contract are "works for hire," as defined by the U.S. Copyright Act, and owned by the Agency. The Agency is considered the author of such materials. To the extent the materials are not "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all materials, including all intellectual property rights, to the Agency effective from the moment of creation of such materials.

Materials in this provision means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Data includes, but is not limited to, all information that supports the findings, conclusions, and recommendations of the Contractor's reports, data extracts, reports or information provided by the Agency. Ownership includes, but is not limited to, the right to use, copyright, patent, register and the ability to transfer these rights.

For materials delivered under the Contract that incorporate pre-existing materials not produced under the Contract, the Contractor hereby grants to the Agency a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such materials to publish, translate, reproduce, deliver, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the Agency.

The Contractor must exert all reasonable effort to advise the Agency, at the time of delivery of materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document that was not produced in the performance of this Contract.

The Contractor must provide the Agency with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any data delivered under this Contract. The Agency has the right to modify or remove any restrictive markings placed upon the data by the Contractor.

COVENANT AGAINST CONTINGENT FEES

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agents maintained by the Contractor for the purpose of securing business. In the event of Contractor’s breach of this clause, the Agency has the right to annul this Contract without liability. In lieu of annulling the Contract, the Agency may deduct the full amount of such commission, percentage, brokerage or contingent fee from the Contract price or consideration.

CUMULATIVE RIGHTS AND REMEDIES

The rights and remedies of the Agency provided for in this Contract are cumulative and not exclusive. The exercise of any right or remedy does not preclude the exercise of any other rights or remedies is available at law, regardless of whether the right or remedy is available at the time of Contract execution.

DEBARMENT, SUSPENSION AND INELIGIBILITY

The Contractor certifies that neither it nor its principals are presently debarred, declared ineligible, or voluntarily excluded from participation in transactions by the State of Washington and, if federal funds are a source of funding for this Contract, any federal department or agency.

DISPUTES

Except as otherwise provided in this Contract, when a dispute arises between the parties’ Contract Managers that cannot be resolved by direct negotiation, either party may request a dispute hearing with the Director.

The request for a dispute hearing must:

1. Be in writing;
2. State the disputed issue(s);
3. State the relative positions of the parties;
4. State the Contractor’s name, address, and Contract Number; and
5. Be mailed to the Director and the other party’s (respondent’s) representative within 3 days after the parties agree that they cannot resolve the dispute.

The respondent must send a written answer to the requester’s statement to the Director and the requester within 5 days. The Director must review the written statements and reply in writing to both parties within 10 days. The Director may extend this period by notifying the parties.

This dispute process precedes any action in a judicial or quasi-judicial tribunal. Nothing in this Contract limits the parties’ choice of a mutually acceptable alternate dispute resolution method in addition to the dispute resolution procedure outlined above.

DUPLICATE PAYMENT

Contractor must not charge the Agency for services and expenses that Contractor has charged or will charge to the State of Washington or any other party under any other contract or agreement. The Agency is not liable for payment of such charges.

EXECUTIVE ORDER 18-03 – WORKERS’ RIGHTS

As previously certified in Contractor’s bid, quotation and/or proposal submission, Contractor represents and warrants that Contractor does NOT require its employees, as a condition of employment, to sign or agree to mandatory individual arbitration clauses or class or collective action waivers. Contractor further represents and warrants that during the term of this Contract, Contractor

will not require its employees to sign or agree to mandatory individual arbitration clauses or class or collective action waivers as a condition of employment.

GOVERNING LAW AND VENUE

This Contract must be construed and interpreted in accordance with the laws of the State of Washington, and the venue of any action brought in connection with this Contract is proper only in the Superior Court for Thurston County.

INDEMNIFICATION

To the fullest extent permitted by law, the Contractor must indemnify, defend, and hold harmless the State and its agencies, officials, agents, or employees, from and against all claims for injuries or deaths arising out of or resulting from the performance of this Contract. "Claim," as used in this Contract, means any financial loss, claim, suite, action, damage, or expense, including but not limited to attorney's fees, attributable for bodily injury, sickness, disease, or death, or injury to or destruction of tangible property including loss of use resulting thereby.

The Contractor's obligations to indemnify, defend, and hold harmless includes any claim by the Contractor's agents, employees, representatives, or any subcontractor or its employees.

The Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to the Contractor's or any subcontractor's performance or failure to perform the Contract. The Contractor's obligation to indemnify, defend, and hold harmless the State is not eliminated or reduced by any actual or alleged concurrent negligence of State and its agencies, officials, agents, or employees.

The Contractor waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents, or employees.

INDEPENDENT CAPACITY OF THE CONTRACTOR

The parties intend this Contract to create an independent contractor relationship. The Contractor and its employees or agents performing under this Contract are not employees or agents of the Agency. The Contractor will not hold itself out as, nor claim to be, an officer or employee of the Agency or of the State of Washington by reason of this Contract, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Contractor is solely responsible for conduct and control of the work.

INDUSTRIAL INSURANCE COVERAGE

The Contractor must comply with the provisions of Title 51 RCW, Industrial Insurance. If the Contractor fails to provide industrial insurance coverage or fails to pay premiums or penalties on behalf of its employees, as may be required by law, the Agency may collect from the Contractor the full amount payable to the Industrial Insurance accident fund. The Agency may deduct the amount owed by the Contractor to the accident fund from the amount payable to the Contractor by the Agency under this Contract, and transmit the deducted amount to the Department of Labor and Industries, (L&I) Division of Insurance Services. This provision does not waive any of L&I's rights to collect from the Contractor.

LICENSING, ACCREDITATION, AND REGISTRATION

The Contractor must comply with all applicable local, state, and federal licensing and accrediting requirements / standards, necessary in the performance of this Contract.

LIMITATION OF SIGNATURE AUTHORITY

Except in the case of an extension of time, only the Agency's delegate by writing (delegation to be made prior to action) has the expressed, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. No alteration, amendment, modification, or waiver of any clause or condition of this Contract is effective or binding unless made in writing and signed by the Agency.

NONDISCRIMINATION & CIVIL RIGHTS

During the performance of this Contract, the Contractor must comply with all federal and state nondiscrimination laws, regulations and policies. In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Contract may be rescinded, canceled, or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the Agency. The Agency must give Contractor reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the Disputes clause set forth by this Contract.

OVERPAYMENTS AND ASSERTION OF LIEN

Contractor must refund to Agency any amount of overpayment or erroneous payment. The Agency may secure repayment, plus interest, by the filing of a lien against the Contractor's real property or by requiring Contractor to post a bond, assignment of deposit, or some other form of security acceptable to the Agency.

PROPRIETARY INFORMATION

The Agency is subject to chapter 42.56 RCW, the Public Records Act. This Contract and any documents Contractor submits to the Agency under this Contract is a public record as defined in RCW 42.56. If the Contractor submits any information to the Agency that the Contractor claims to be confidential or proprietary, Contractor must be clearly identify the information as such. To the extent consistent with chapter 42.56 RCW, the Agency will maintain the confidentiality of all such information marked confidential or proprietary. If the scope of a request made pursuant to RCW 42.56 includes the Contractor's proprietary or confidential information and the Agency intends to release the information, the Agency will notify the Contractor of the request and the date the records will be released to the requester. If Contractor desires to prevent disclosure, Contractor must obtain a court order enjoining disclosure. If the Contractor fails to obtain such court order, the Agency will release the requested information.

PUBLICITY

The Contractor must submit to the Agency all advertising and publicity matters relating to this Contract in which the Agency's identity is named, inferred, or implied. The Contractor must not publish or use such advertising and publicity matters without the prior written consent of the Agency.

RECAPTURE

If the Contractor fails to perform this Contract in accordance with state laws, federal laws, and/or the provisions of this Contract, the Agency reserves the right to recapture funds in an amount to compensate the Agency for the noncompliance.

RECORDS, DOCUMENTS, AND REPORTS

The Contractor must maintain books, records, documents and other evidence relating to this Contract and performance of the services described by this Contract, including but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records, including materials generated under the Contract, are subject at all reasonable times to inspection, review, or audit by personnel duly authorized by the Agency, the State Auditor, and federal officials so authorized by law, rule, regulation, or contract. The Contractor is responsible for any audit exceptions or disallowed costs incurred by the Contractor or any of its Subcontractors.

The Contractor must retain all books, records, documents, and other materials relevant to this Contract for six years following the date of final payment. If additional litigation, claim or audit is started before the expiration of the six (6) year period, the Contractor must retain all records until all litigation, claims, or audit findings involving the records are resolved.

REGISTRATION WITH DEPARTMENT OF REVENUE

The Contractor must comply with the Washington State law requiring registration with the Department of Revenue.

SEVERABILITY

The provisions of this Contract are severable. If any provision is held to be illegal or invalid for any reason whatsoever, such illegality or invalidity does not affect the validity of the remainder of the Contract.

SITE SECURITY

While on the Agency premises, Contractor, its agents, employees, or subcontractors must conform in all respects with physical, fire or other security policies or regulations.

SUBCONTRACTS

The Contractor must not enter into subcontracts for any of the work contemplated under this Contract without prior written approval of the Agency. Contractor must prohibit Subcontractors from further subcontracting without prior written approval of the Agency. The existence of the subcontract does not operate to release or reduce the liability of the Contractor to the Agency for any breach in the performance of the contractor's duties. This clause does not include contracts of employment between the Contractor and personnel assigned to work under this Contract.

The Contractor must ensure that all terms, conditions, assurances and certifications set forth in this Contract are carried forward to any subcontracts.

SURVIVAL

The terms, conditions, and warranties in this Contract that by their sense and context are intended to survive beyond performance, survive the expiration, cancellation, or termination of this Contract.

TAXES

The Contractor is solely responsible for payment of all taxes due on payments under this Contract. The Contractor is solely responsible for all payments accrued on account of payroll taxes, unemployment contributions, any other taxes, insurance or other expenses for the Contractor.

TERMINATION OR SUSPENSION FOR CONVENIENCE

The Agency may terminate or suspend this Contract for convenience, in whole or part, upon 10 days written notice. If this Contract is so terminated, the Agency is liable only for payments required under the terms of this Contract for services rendered or goods provided prior to the effective date of termination.

TERMINATION OR SUSPENSION FOR CAUSE

If the Agency determines the Contractor has failed to comply with the conditions of this Contract in a timely manner, the Agency must notify the Contractor in writing of the need to take corrective action, unless such notice of corrective action is otherwise excused by this Contract. The Agency may suspend all or part of the Contract or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged breach or the time Contractor takes for corrective action. If the Contractor does not take required corrective action within 30 days, the Agency may immediately, or upon a date determined by the Agency, terminate the Contract. If so terminated, the termination is deemed a "Termination for Convenience" if the Agency determines that failure to perform was outside the control of the Contractor and the Contractor is not otherwise in default, at fault, or negligent.

In the event of termination or suspension for cause, the Contractor is liable for damages as authorized by law including, but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of the competitive bidding, mailing, advertising and staff time.

TERMINATION OR SUSPENSION FOR LOSS OF FUNDING OR GOVERNMENT SHUTDOWN

If funding from any source is withdrawn, reduced, or limited in any way after the effective date of this Contract and prior to normal completion, the Agency may immediately terminate or suspend the Contract without advance notice. In lieu of termination or suspension, the parties may amend the Agreement to reflect the new funding limitations and conditions. If temporary federal or state government shutdowns occur for any reason, the Agency may suspend this Contract or delay payments due under it without advance notice.

TERMINATION PROCEDURE

Upon termination of this Contract, the Contractor must deliver to the Agency any property specifically produced or acquired for the performance of this Contract in accordance with the Treatment of Assets provision.

The Agency must pay to the Contractor the agreed upon price, if separately stated, for completed work and services accepted by the Agency and the amount agreed upon by the Contractor and the Agency for the following:

1. Completed work and services for which no separate price is stated;
2. Partially completed work and services;
3. Other property or services which are accepted by the Agency; and
4. The protection and preservation of property, unless the termination is for cause, in which case the Director will determine the extent of the liability. The Agency may withhold from any amounts due the Contractor such sum as the Director determines to be necessary to protect the Agency against potential loss or liability.

After receipt of a notice of termination, and except as otherwise directed by the Agency's Contract Manager, the Contractor must:

1. Stop work under the Contract on the date, and to the extent specified in the notice;
2. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract as is not terminated;
3. Assign to the Agency, in the manner, at the times, and to the extent directed by the Agency's Contract Manager all of the rights, titles, and interest of the Contractor under the orders and subcontracts so terminated, in which case the Agency has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
4. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agency's Contract Manager to the extent he or she may require, which approval or ratification is final for all the purposes of this clause;
5. Transfer title to the Agency and deliver in the manner, at the times, and to the extent, if any, as directed by the Agency's Contract Manager, any property which, if the Contract had been completed, would have been required to be furnished to the Agency;
6. Complete performance of such part of the work that has not been terminated; and
7. Take such action as may be necessary, or as the Agency's Contract Manager may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the Agency has or may acquire an interest.

TREATMENT OF ASSETS

Title to all property furnished by the Agency remains in the Agency. Title to all property purchased by the Contractor the cost of which the Contractor has been reimbursed as a direct item of cost under this Contract, passes to and vests in the Agency upon delivery of such property by the Contractor. The title passes to the Contractor only if the Agency specifically agrees to grant title in this Contract for asset(s) purchased.

Contractor must use any property furnished by the Agency only for the performance of this Contract, unless otherwise provided by this Contract or approved by the Agency in writing.

Contractor must return property to the Agency in same condition as when it was furnished to the Contractor, normal wear and tear excepted. The Contractor is responsible for any loss or damage to property of the Agency that results from the Contractor's negligence or the Contractor's failure to maintain the property in accordance with sound management practices.

If any Agency property is lost, damaged or destroyed, the Contractor must notify the Agency and take all reasonable steps to protect that property from further damage.

The Contractor must surrender to the Agency all property of the Agency upon completion, termination or cancellation of this Contract.

All reference to the Contractor under this clause includes any employees, agents or Subcontractors.

U. S. DEPARTMENT OF TREASURY, OFFICE OF FOREIGN ASSETS CONTROL

The Agency complies with U.S. Department of the Treasury, Office of Foreign Assets Control (OFAC) payment rules. OFAC prohibits financial transactions with individuals or organizations, which have been placed on the OFAC Specially Designated Nationals (SDN) and Blocked Persons sanctions list located at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>. Compliance with OFAC payment rules ensures that the Agency does not conduct business with individuals or organizations that have been determined to be supporters of terrorism and international drug dealing or that pose other dangers to the United States.

Prior to making payment to individuals or organizations, the Agency will download the current OFAC SDN file and compare it to Agency and statewide vendor files. In the event of a positive match, the Agency reserves the right to: 1) make a determination of "reasonability" before taking the positive match to a higher authority, 2) seek assistance from the Washington State Office of the State Treasurer (OST) for advanced assistance in resolving the positive match, 3) comply with an OFAC investigation, if required, and/or 4) if the positive match is substantiated, notify the Contractor in writing and terminate the Contract according to the Termination for Convenience provision without making payment. The Agency will not be liable for any late payment fees or missed discounts that are the result of time required to address the issue of an OFAC match.

WAIVER

Failure to insist on strict performance by either party does not constitute a waiver of the other party's obligations. Waiver of any right must be in writing and signed by an authorized representative of the party waiving the right.

ATTACHMENT B STATEMENT OF WORK

The Contractor agrees to perform the duties and responsibilities of an Organic Inspector, following all required activities and processes established in 7 CFR Part 205, USDA organic regulations.

1. The Contractor will perform inspections in WA as assigned by WSDA.
2. The Contractor will receive or be provided access to an inspection file for each assigned inspection that includes, but is not limited to: names, addresses and telephone numbers of the party(s) to be inspected, copies of applicable Organic System Plans and Updates, maps of the sites or facilities to be inspected, a copy of the last annual inspection report, copies of the last inspection and renewal review letters to clients, product formulations, label information, and certification summaries listing areas of concerns for the inspector to evaluate.
3. Using instruction provided by WSDA, the Contractor will schedule the inspection with the certified operator, providing the operator with an overview of the inspection process and upfront communication regarding the types of records to have available during the scheduled inspection.
4. The Contractor will conduct an on-site inspection, which will include an on-site visit when an authorized representative of the operation who is knowledgeable about the operation is present or when necessary, available by remote communication, and when the land, facilities, and activities that demonstrate compliance or capacity to comply can be observed, except in the case of the assignment of an unannounced inspection.
5. The inspection will include visual inspection of all certified land and facilities where organic products are grown, stored, processed, handled, and/or packed. All equipment associated with organic products must be evaluated and the production practices, input material applications, and recordkeeping of the certified operation must be verified in accordance with USDA organic regulations. The inspection may include the sampling of agriculture products, as specified by WSDA.
6. During the on-site inspection the Contractor must verify:
 - a. The operation's compliance or capability to comply with the USDA organic regulations (7 CFR Part 205);
 - b. That the information, including the organic production or handling system plan, provided in accordance with §§205.401, 205.406, and 205.200, accurately reflects the practices used or to be used by the applicant for certification or by the certified operation;
 - c. That prohibited substances have not been and are not being applied to the operation through means which, at the discretion of the certifying agent, may include the collection and testing of soil; water; waste; seeds; plant tissue; and plant, animal, and processed products samples.
7. The Contractor must conduct an exit interview with an authorized representative of the operation who is knowledgeable about the inspected operation to confirm the accuracy and completeness of inspection observations and information gathered during the limited contact inspection. The Contractor must also address the need for any additional information as well as any issues of concern.

At the time of the inspection, the Contractor shall provide the operation's authorized representative with a receipt for any samples taken.
8. In light of the COVID-19 pandemic, some inspection procedures may be adjusted to accommodate physical distancing requirements. WSDA will provide instruction when such procedures are required.

9. The Contractor will document the inspection on the forms and in the format provided by WSDA. Reports must be submitted within 14 calendar days of the inspection and by the end of the contract period, November 30 of each year. The final report will include USDA organic regulations citations and attachments, including photos, as necessary to demonstrate compliance. Inspection reports should include observations and verification methods for each control point and fully describe any potential/suspected non-compliances.
10. A copy of the Contractor's inspection report, a review letter or notice in response to the findings of the inspection, and any test results will be sent to the inspected operation by WSDA.
11. The Contractor must maintain complete and accurate records of all correspondence related to each inspection through the contract period.